

expired on January 2, 2020, and the dispositive motions deadline is February 1, 2020. [Doc. 31].

On December 9, 2019, this Court notified the Plaintiff that the Court would dismiss Defendant FNU Daves (“Defendant Daves”) without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure if the Plaintiff failed, within 14 days of that Order, to show good cause for the failure to timely serve Defendant Daves. [Doc. 35].

Under Rule 4(m) of the Federal Rules of Civil Procedure:

If a defendant is not served within 90 days after the complaint is filed, the court---on motion or on its own motion after notice to the plaintiff---must dismiss the action without prejudice against the defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). This Rule makes clear that the Court must extend the service period if the plaintiff can show “good cause” for the failure to serve. Brooks v. Johnson, 924 F.3d 104, 120 (4th Cir. 2019). “What constitutes ‘good cause’ for purposes of Rule 4(m) ‘necessarily is determined on a case-by-case basis within the discretion of the district court.” Collins v. Thornton, --- F. App’x ---, 2019 WL 3801449, at *1 (4th Cir. Aug. 13, 2019) (citations omitted). The service period in Rule 4(m) is tolled while the district court considers an *in forma pauperis* complaint. Robinson v. Clipse, 602 F.3d 605, 608 (4th Cir. 2010).

Here, the Court concluded its initial review of Plaintiff’s Complaint on February 12, 2019. [Doc. 9]. As such, Plaintiff had until May 13, 2019, to serve Defendant Daves. In response to the Court’s show cause order, the Plaintiff states that he does not have access to Defendant Daves’ address because Plaintiff is currently in prison. [Doc. 37]. Then, Plaintiff reiterates that Defendant Daves was involved in the attack that is the subject of Plaintiff’s Complaint. [Id.]. Plaintiff, however, does not describe any efforts he has undertaken to locate Defendant Daves. Further, the record also shows that Plaintiff has been aware that Defendant Daves has not been served since on


or around July 22, 2019, at the latest. [Doc. 25].

As such, the Plaintiff has not shown good cause for his failure to timely serve Defendant Daves. Further, the Court declines to exercise its discretion to extend the time for service at this late stage of these proceedings. The Court will, therefore, dismiss Defendant Daves from this action.

IT IS, THEREFORE, ORDERED that:

1. Defendant FNU Daves is hereby dismissed as a Defendant in this case without prejudice.
2. Plaintiff's Motion for Entry of Default [Doc. 34] is **DENIED** as moot.

Signed: January 14, 2020


Frank D. Whitney
Chief United States District Judge

